PACIFIC FOREST INDUSTRIES SDN BHD & ANOR A

v.

LIN WEN-CHIH & ANOR

FEDERAL COURT, PUTRAJAYA B
ZAKI TUN AZMI CJ
HASHIM YUSOFF FCJ
MOHD GHAZALI YUSOFF FCJ
[CIVIL APPEAL NO: 02(f)-32-2008(S)]
7 SEPTEMBER 2009 C

CIVIL PROCEDURE: *Pleadings - Issue not pleaded - Frustration of contract - Particulars - Frustration not pleaded in trial court or as a ground of appeal in appellate court - Whether appellate court could still hold that contract has been frustrated* D

CONTRACT: *Frustration - Sale and purchase - Difficulty in interpreting terms of agreement - Whether amounted to frustration - Whether agreement not frustrated since there was no impossibility of interpreting parties' intentions* E

In this appeal by the appellants/defendants, they raised two complaints. Firstly, that the Court of Appeal had considered a matter *ie*, the issue of frustration of contract, which was neither pleaded nor argued at any stage of the proceedings, be it at the High Court or the Court of Appeal. Secondly, following that F
mistake, the Court of Appeal continued to make an obvious and erroneous statement of law as to what is frustration. Hence, leave was granted for the following two questions to be decided: (i) whether it is open to an appellate court to find or hold that a contract has been frustrated notwithstanding that such had not G
been pleaded in the trial court or as a ground of appeal in the appellate court; and (ii) whether the doctrine of frustration in the law of contracts recognises the failure of the parties to a concluded and valid sale and purchase agreement of a product to agree on the sale and purchase price as a frustrating event, when H
the agreement provides for a price consistent with the prevailing market price of the product.

I

Held (allowing the appeal)
Per Zaki Tun Azmi CJ delivering the judgment of the court:

(1) In the instant appeal, the case was pleaded on a breach of contract. The 1st defendant's defence was that the respondents/plaintiffs had only ordered one shipment, three shipments short of the terms of the agreement, although the 1st defendant was ready and willing to supply the timber products. The reply contended otherwise. There was nothing in the pleadings that could be related to frustration. It is trite that in pleading frustration, particulars which give rise to frustration must be provided specifically in the pleadings. The parties in this case had not pleaded or submitted that the contract in question had been frustrated. The defendants were thus highly prejudiced when the Court of Appeal decided on the issue of frustration. Therefore, the answer to the first question must be in the negative. (paras 18 & 19)

(2) According to the facts of this case, the parties had provided for a mechanism (or guideline) to determine the price *viz*. "a price consistent with the prevailing market price". The trial judge was correct in holding that the plaintiffs' claim was premature as the parties were bound by the agreement which they could have performed, *albeit* with some difficulty. The Court of Appeal was, hence, wrong in holding that the difficulty in interpreting the terms of the agreement amounted to frustration. It could not be so because the agreement clearly expressed the intention between the parties to the agreement to determine the price, namely, "a price consistent with the prevailing market price". The agreement was not frustrated since there was no impossibility of interpreting their intentions. It may be difficult, but not impossible. Therefore, the answer to the second question was also in the negative. (paras 27 & 28)

Bahasa Malaysia *Translation Of Headnotes*

Dalam rayuan ini oleh perayu-perayu/defendan-defendan, mereka mengemukakan dua aduan. Pertamanya, bahawa Mahkamah Rayuan telah mempertimbangkan sesuatu perkara, iaitu, isu kekecewaan kontrak, yang tidak dihujah atau diplid pada mana-mana peringkat prosiding, sama ada di Mahkamah Tinggi ataupun Mahkamah Rayuan. Keduanya, berikutan dari kesilapan itu, Mahkamah Rayuan terus membuat suatu pernyataan undang-

undang yang ketara dan salah mengenai apa sebenarnya kekecewaan. Oleh yang demikian, kebenaran telah diberi untuk menentukan dua soalan yang berikutan: (i) sama ada ia dibenarkan bagi sebuah mahkamah rayuan untuk mendapati atau memutuskan bahawa suatu kontrak telah dikecewakan walaupun ia tidak diplid dalam mahkamah perbicaraan atau sebagai satu alasan rayuan dalam mahkamah rayuan; dan (ii) sama ada doktrin kekecewaan dalam undang-undang kontrak mengiktirafkan kegagalan pihak-pihak kepada suatu perjanjian jual beli sesuatu produk yang muktamad dan sah untuk bersetuju atas harga jual beli sebagai satu perkara mengecewakan, apabila perjanjian itu menyediakan untuk sesuatu harga yang konsisten dengan harga pasaran produk itu yang lazim diikuti.

Diputuskan (membenarkan rayuan)
Oleh Zaki Tun Azmi KHN menyampaikan penghakiman mahkamah:

(1) Dalam rayuan semasa, kes diplid atas sesuatu pemungkiran kontrak. Pembelaan defendan pertama ialah bahawa responden-responden/plaintif-plaintif telah hanya pesan satu penghantaran, iaitu tiga penghantaran kurang dari terma-terma perjanjian, walaupun defendan pertama bersedia dan sanggup membekalkan produk-produk pembalakan tersebut. Jawapan yang diberi mendakwa sebaliknya. Tiada apa-apa dalam pliding yang berhubung dengan kekecewaan. Ia merupakan mantap bahawa dalam memplid kekecewaan, butir-butir yang membuktikan kekecewaan mesti dikemukakan dengan khususnya dalam pliding. Pihak-pihak dalam kes ini tidak memplid atau menghujah bahawa kontrak yang berkenaan telahpun dikecewakan. Defendan-defendan, oleh itu, telah diprejudiskan apabila Mahkamah Rayuan memutuskan atas isu kekecewaan. Oleh yang demikian, jawapan kepada soalan pertama berbentuk negatif.

(2) Mengikut fakta-fakta kes ini, pihak-pihak telah menyediakan satu mekanisme (atau garis panduan) untuk menentukan harga, iaitu, "suatu harga yang konsisten dengan harga pasaran yang lazim diikuti". Hakim perbicaraan adalah betul dalam memutuskan bahawa tuntutan plaintif-plaintif ialah pramasa disebabkan pihak-pihak terikat oleh perjanjian yang mereka boleh melaksanakan, meskipun dengan sedikit kesusahan. Mahkamah Rayuan, oleh itu, khilaf dalam memutuskan bahawa

kesusahan untuk mentafsirkan terma-terma perjanjian itu bermaksud kekecewaan. Ia tidak boleh sebegitu kerana perjanjian itu menyatakan dengan jelas niat di antara pihak-pihak kepada perjanjian itu untuk menentukan harganya, iaitu, "suatu harga yang konsisten dengan harga pasaran yang lazim diikuti". Perjanjian itu tidak dikecewakan kerana tidak ada mustahilnya mentafsirkan niat-niat mereka. Ia mungkin susah, tetapi bukan mustahil. Oleh yang demikian, jawapan kepada soalan yang kedua juga berbentuk negatif.

Case(s) referred to:

Davis Contractors Ltd v. Fareham UDC [1956] AC 696 ***(refd)***

Guan Aik Moh (KL) Sdn Bhd & Anor v. Selangor Properties Bhd [2007] 3 CLJ 695 CA ***(refd)***

Hock Hua Bank (Sabah) Bhd v. Yong Liuk Thin & Ors [1995] 2 CLJ 900 CA ***(refd)***

Hoecheng Products Co Ltd v. Cargill Hong Kong Ltd [1995] (PC) 1 WLR 404 ***(refd)***

Janagi v. Ong Boon Kiat [1971] 2 MLJ 196 ***(refd)***

Joseph Constantine Steamship Line Ltd v. Imperial Smelting Corp Ltd [1942] AC 154 ***(refd)***

Kin Nam Development Sdn Bhd v. Khau Daw Yau [1984] 1 CLJ 347; [1984] 1 CLJ (Rep) 181 FC ***(refd)***

Ramli Zakaria & Ors v. Government of Malaysia [1983] 1 CLJ 73; [1983] CLJ (Rep) 350 FC ***(refd)***

Sudbrook Trading Estate Ltd v. Eggleton [1983] AC 444 ***(refd)***

Tan Kong Min v. Malaysia National Insurance Sdn Bhd [2005] 3 CLJ 825 FC ***(refd)***

Veronica Lee Ha Ling & 15 Ors v. Maxisegar [2009] 6 CLJ 232 CA ***(refd)***

Legislation referred to:

Contracts Act 1950, ss. 33, 57(2)

Other source(s) referred to:

Bullen & Leake & Jacob's Precedents of Pleadings, 13th edn, London, Sweet & Maxwell (1990), p 1102

Chitty on Contracts – General Principles, 24th edn, p 658/9

Visu Sinnadurai, *Law of Contract in Malaysia and Singapore: Cases and Commentary*, 2nd edn (1987), p 519

For the appellant - Porres Royan (Colin Lau & Lim Hock Leng with him); M/s Lim Guan Sing & Co

For the respondent - Karpal Singh (Roland Cheng & Henry Chin with him); M/s Shim & Pang

[Editor's note: For the Court of Appeal judgment, please see Lin Wen-Chih & Anor v. Pacific Forest Industries Sdn Bhd & Anor [2008] 5 CLJ 29.]

Reported by Suresh Nathan

JUDGMENT

Zaki Tun Azmi CJ:

Introduction

[1] The appellants raised two complaints before us. The first complaint is that the Court of Appeal had considered a matter which were neither pleaded nor argued at any stage of the proceedings be it at the High Court or the Court of Appeal. According to the appellants, the Court of Appeal in considering the judgment from the High Court, delved itself into the issue of frustration, when that question was never raised in the pleadings, in the argument at the High Court, the Memorandum of Appeal to the Court of Appeal, or in the course of argument at the Court of Appeal. Secondly, following that mistake, the Court of Appeal continued to make what the appellants contend as an obvious and erroneous statement of law as to what is frustration. Hence leave was granted on the following two questions for us to decide:

Question 1

Whether it is open to an appellate Court to find or hold that a contract has been frustrated notwithstanding that such had neither been pleaded nor canvassed in the trial Court and neither pleaded as a ground of appeal in the appellate Court?

Question 2

Whether the doctrine of frustration in the law of contracts recognizes the failure of the parties to a concluded and valid sale and purchase agreement of a product to agree on the sale and purchase price as a frustrating event when the agreement provides for a price consistent with the prevailing market price of the product?

[2] I decided to follow the suggestion by the appellants' counsel that parties to this appeal be referred to in the same manner (by their designation) as at the High Court. The appellants will therefore be referred to as the 1st and 2nd defendants or defendants respectively, whilst the respondents be referred to as the 1st and 2nd plaintiffs or plaintiffs respectively.

A **Facts**

[3] The 1st defendant was operating a sawmill and was formerly known as Veramex Sdn Bhd. The plaintiffs were once the directors of the 1st defendant and together with their two other B brothers were shareholders of the 1st defendant. As on 28 August 1996, the 1st defendant owed the plaintiffs a sum of RM10,134,000. There is no dispute as to this fact. At that time, the plaintiffs together with their two brothers held 6,500,000 shares in the 1st defendant and by a Share Sale Agreement dated C 12 November 1996, the plaintiffs and their two brothers agreed to sell the shares to a purchaser by the name of Liew Ho-Tien. Liew Ho-Tien was described by the 1st plaintiff as the representative of the 2nd defendant. By a letter dated 12 November 1996, the 1st defendant agreed on the method of D settling their RM10,134,000 debt. This was to pay the plaintiffs the amount owed together with interest at the rate of interest of 11 percent per annum calculated on a day to day basis with the following undertakings:

E a) That the 1st defendant shall sell and the plaintiffs shall purchase timber products manufactured by the 1st defendant at a price consistent with the prevailing market price and which, in total, cost the same amount as the outstanding sum plus the agreed interest over a period of ten months and such F timber products are to be delivered in four shipments.

b) The cost of the timber products sold shall be deducted from and set off against the outstanding debt and agreed interest.

[4] In short, what the parties agreed was that the debt is to be G set off against the supply of the 1st defendant's timber products to the plaintiffs. The price of timber to be supplied will be at the "prevailing market price". If however, the timber products are not supplied according to the agreement, the 1st defendant undertook to pay cash *in lieu* of the timber products.

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[5] It was conceded by the plaintiffs at p. 147 of the record of appeal that the plaintiffs placed only one order for the 1st defendant's timber products by a sale contract dated 6 November 1997 resulting in the reduction of the amount owing to the I plaintiffs. It should be noted that the factory producing the timber products closed down in July 1998.

[6] At the High Court, the plaintiffs' claim was dismissed and on a finding of fact. It was concluded that the plaintiffs' claim was premature. This is how the learned High Court judge concluded his judgment:

> … since the Plaintiffs failed to comply with the terms stipulated in Exh. P2 within the time specified or within a reasonable time after the expiry and since it was not shown that the events that could have triggered the payment of cash had arisen the claim should therefore be taken as premature.

[7] Simply put, the High Court found that the plaintiffs had prematurely filed their claims because it was never shown that the events that could have triggered the payment of cash had arisen.

[8] During the course of trial, there was also a dispute as to the price that was to be fixed for the sale of the timber products by the 1st defendant to the plaintiffs. We must bear in mind that the price of the timber products that were to be sold by the 1st defendant to the plaintiffs was at "a price consistent with the prevailing market price". This is the term used in the agreement mentioned above. What then is the "prevailing market price"?

[9] In an attempt to answer the question above, the Court of Appeal concluded that because the parties could not agree as to the "prevailing market price" at the material time, which, to the Court of Appeal is a fundamental term, then the agreement is frustrated. This is what the Court of Appeal said:

> Out of a total of four attempts to purchase the 1st Respondent's timber products, only one transaction was concluded for the purpose of this set-off. Evidence disclosed that this was due to the failure of the parties to agree on the price. According to the appellants (Plaintiffs), the prices quoted by the 1st respondent (1st Defendant) were too high. They were inconsistent with those prevailing in the market at the material time. This was the price agreed upon by the parties under exhibit P2. *We are of the view that when the parties disagree on this fundamental term and there is no provision in the agreement to settle this, then the agreement is frustrated.* It was not due to a lack of trying or the fault of any one party but just that the contractual obligation has become impossible to perform due to the absence of a mechanism in the agreement to settle this dead lock. When the price cannot be agreed then naturally there can be no purchase of the 1st respondent's (1st Defendant) timber products for the purpose of set off. Under such circumstances, s. 57(2)[1] of the Contracts Act 1950 (the Act) applies.

A …

Another provision that is applicable here is s. 33[2] of the Act … (emphasis added)

[10] Was this statement, in relation to frustration, a statement of B law or was the word "frustrated" used by the Court of Appeal to be read in a just a colloquial way?

[11] I am of the opinion that the Court of Appeal intended to apply the word "frustrated" in their judgment above to mean C "frustration" under s. 57(2) as well as s. 33 of the Contracts Act 1950. To my mind, the learned Court of Appeal judge could not have intended to use that word in a colloquial manner.

[12] But it is clear as daylight that the statement the Court of D Appeal made when the learned Court of Appeal judge said, "We are of the view that when the parties disagree on this fundamental term and there is no provision in the agreement to settle this, then the agreement is frustrated" is a wrong statement of law. The reasons for this will be discussed later.

E **[13]** More important and related to the first question is the issue of whether the Court of Appeal was right in invoking a principle of law which was never pleaded or argued at the court below or even before it as a ground for arriving at its decision. "Frustration" was never pleaded or argued at any stage from the High Court to F the Court of Appeal. (See *Veronica Lee Ha Ling & 15 Ors v. Maxisegar* [2009] 6 CLJ 232).

[14] The nature of our system is adversarial. This means that the judge has to listen to submissions or cases put by each party to G an action. He then decides the case based on evidence and submissions put by both parties. In a criminal case, the prosecution has to prove their case beyond reasonable doubt while the defence's burden is merely to raise a doubt. In civil cases however, the burden placed on both parties is equally balanced. H The successful party is the one that is able to prove to the court on the balance of probability that his case is more probable. That is on facts. The claimant has to plead his case in the statement of claim while the defendant pleads in his statement of defence. In short, both parties are aware of the other party's case. In fact, I both parties would know the facts but also the documents, if any, that are going to be relied upon by his opposite party.

[15] The facts pleaded will inadvertently be related to the legal principles that the party will be relying upon. It is not for the court to decide on what principle a party should plead. It should be left to the parties to identify it themselves. (See *Tan Kong Min v. Malaysia National Insurance Sdn. Bhd.*[3], *Hock Hua Bank (Sabah) Bhd. v. Yong Liuk Thin & Ors*[4] and *Janagi v. Ong Boon Kiat*[5]).

[16] The court also decides a case after considering the evidence adduced by each party and documents produced by them. Neither party should be taken by surprise. Even in respect of law, whether it is the court at first instance or the appellate court, judges rely heavily on the submissions put forward by the respective counsel. A good counsel is one who produces authorities to support the statement of law he is relying upon. The authorities can be in the form of reported judgments, text books or even published law articles. In fact, according to etiquette, he is supposed to even bring to the attention of the court authorities which favour his opponent's case. Of course in such an instance, he would then distinguish the facts of the case before the court to the case in the authority. It is therefore dangerous and totally unadvisable, for the court, on its own accord, to consider any point without reliance on any pleadings or submission by counsel appearing before them. If the learned judge thinks there are any points which are relevant to the case before him and which was not raised by either party, it is his duty to highlight that to the parties before him. He must then give an opportunity for both parties to further submit on that particular point[6]. There have been instances where a judge may already form some opinion on certain issues, legal or otherwise, but after hearing submissions and views expressed by a party, he may conclude differently.

[17] The effect of a judge making a decision on an issue not based on the pleadings and without hearing the parties on that particular issue would be in breach of the *latin maxim audi alteram partem*, which literally means, to hear the other side, a basic principle of natural justice.

[18] In the instant appeal, the case was pleaded on a breach of contract and the 1st defendant's defence was that the plaintiffs had only ordered one shipment, three shipments short of the terms of the agreement, although the 1st defendant was ready and willing to supply the timber products. The reply contended otherwise. There was nothing mentioned in the pleadings which could be related to frustration.

[19] It is trite that in pleading frustration, particulars which give rise to frustration must be provided specifically in the pleadings.[7] The parties in this case had not pleaded or submitted that the contract in question had been frustrated. Thus, the defendants were highly prejudiced when the Court of Appeal decided on the issue of frustration.

[20] Therefore, the answer to the first question must be in the negative.

[21] Now, onto the second question. It involves the law of frustration. It was mentioned earlier that the Court of Appeal made a wrong statement of law regarding frustration. I will now explain the reason why.

[22] A contract does not become frustrated merely because it becomes difficult to perform. If a party has no money to pay his debt, it cannot be considered impossible to perform as it is not frustration. Neither can he plead frustration because the terms of the contract make it difficult to interpret. If it cannot be performed or becomes unlawful to perform, then the party who is to perform his part of the bargain can plead frustration. The doctrine of frustration is only a special case to discharge a contract by an impossibility of performance after the contract was entered into[8]. A contract is frustrated when subsequent to its formation, a change of circumstances renders the contract legally or physically impossible to be performed.[9]

[23] Lord Radcliffe said in his speech in *Davis Contractors Ltd v. Fareham UDC*[10] that frustration occurs whenever the law recognises that without the default of either party, a contractual obligation becomes incapable of being performed as the circumstances in which performance is called for would render it a thing radically different from that which was undertaken by the contract. The Latin Maxim *non haec in foedera veni* would apply, which literally means "It was not this that I promised to do". There must be such a change in the significance of the obligation that the thing undertaken would, if performed, be a different thing from that contracted for. Lord Reid questioned whether the contract which was made on its true construction, was wide enough to apply to the new situation: if it is not, then it is at an end.[11]

[24] This was enunciated by Abdul Hamid FJ (as he then was) in *Ramli Zakaria & Ors v. Government of Malaysia*[12] . The doctrine of frustration was further elaborated about two years later by Salleh Abas CJ (Malaya) (as he then was) in *Kin Nam Development Sdn Bhd v. Khau Daw Yau*[13] where his Lordship said:

> It occurs in a situation where due to a change of circumstances a contract is rendered legally and physically impossible of performance. The doctrine is an exception to the general rule as to an absolute contract in that a person who specifically undertakes an absolute obligation cannot afterwards claim to be absolved from liability by the fact that his failure to perform the obligation is due to the occurrence of an event over which he has no control. The doctrine does not apply just because the promisor's obligation has become, because of change of circumstances, more onerous than what he has contracted for.

[25] According to s. 57 of the Contracts Act 1950, an agreement to do an act of impossibility is void and a contract to do an act which, after it is made, becomes impossible or unlawful and it was not induced by the promisor, becomes void when the act becomes impossible or unlawful.[14] Gopal Sri Ram JCA (as he then was) explained the ambit of s. 57 in *Guan Aik Moh (KL) Sdn Bhd & Anor v. Selangor Properties Bhd*[15] as follows:

> [7] It follows from the foregoing authorities that there are three elements woven into the fabric of the doctrine embodied in s. 57. First, the event upon which the promisor relies as having frustrated the contract must have been one for which no provision has been made in the contract. If provision has been made then the parties must be taken to have allocated the risk between them. Second, the event relied upon by the promisor must be one for which he or she is not responsible. Put shortly, self induced frustration is ineffective. Third, the event which is said to discharge the promise must be such that renders it radically different from that which was undertaken by the contract. The court must find it practically unjust to enforce the original promise. If any of these elements are not present on the facts of a given case, then s. 57 does not bite.

[26] Furthermore, when there is a machinery or a guideline where parties have earlier indicated their agreement (as in this case, the price of the timber products were agreed to be "a price consistent with the prevailing market price") and if there is a difficulty in arriving to the agreed terms, the court can apply any method in

A interpreting and substitute its own machinery. The court is under obligation to interpret a contract according to what is pleaded. Parties are under a duty to assist the court. In *Sudbrook Trading Estate Ltd v. Eggleton*[16] the House of Lords held that since the price was capable of being ascertained by a machinery, and if the B machinery broke down for any reason, the court would substitute its own machinery, to ascertain a fair and reasonable price. Lord Diplock, in his speech, said:

> The only thing that has prevented the machinery provided by the C option clause for ascertaining the fair and reasonable price from operating is the lessor's own breach of contract in refusing to appoint their valuer. So if the synallagmatic contract created by the exercise of the option was allowed to be treated by the lessors as frustrated the frustration would be self-induced, a circumstance which English law does not allow a party to a contract to rely on D to his own advantage. So I see no reason why, because they have broken one contractual obligation the lessors should not be ordered by the court to perform another contractual obligation on their part namely to convey the fee simple in the premises to the lessees against payment of a fair and reasonable price assessed by applying the objective standards to which I have referred. E

[27] According to the facts of this case, the parties had provided for a mechanism (or guideline) to determine the price, *viz*, "a price consistent with the prevailing market price". The learned trial judge was correct in holding that the plaintiffs' claim was premature as F the parties were bound by the agreement which they could have performed *albeit* with some difficulty. The Court of Appeal was therefore wrong in holding that the difficulty in interpreting the terms of an agreement amounted to frustration. It cannot be so because the agreement clearly expresses the intention between the G parties to the agreement which is to determine the price, namely, "a price consistent with the prevailing market price". The agreement is not frustrated as there is no impossibility of interpreting their intentions. It may be difficult, but not impossible or incapable.

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[28] Therefore, the answer to the second question is also in the negative.

[29] The defendant's appeal is allowed with costs here and I below. Deposit to be returned to the defendants.

[30] My learned brothers Hashim Dato' Hj. Yusoff, FCJ and Mohd. Ghazali Mohd Yusoff, FCJ have seen this judgment in draft and expressed their agreement with it.

Endnotes:

1. Section 57: Agreement to do impossible act: (2) Contract to do act afterwards becoming impossible or unlawful. A contract to do an act which, after the contract is made, becomes impossible, or by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.
2. Section 33: Enforcement of contracts contingent on an event happening.(a) Contingent contracts to do or not to do anything if an uncertain future event happens cannot be enforced by law unless and until that event has happened. (b) If the event becomes impossible, such contracts become void.
3. [2005] 3 CLJ 825.
4. [1995] 2 CLJ 900.
5. [1971] 2 MLJ 196 (HC) at p. 196 para G.
6. See *Hoecheng Products Co. Ltd. v. Cargill Hong Kong Ltd* [1995] (PC) 1 WLR 404 at p 407-409.
7. See *Bullen & Leake & Jacob's Precedents of Pleadings*, 13th edn, London, Sweet & Maxwell (1990) at p. 1102.
8. See *Joseph Constantine Steamship Line Ltd v. Imperial Smelting Corp Ltd* [1942] AC 154 (HL).
9. Visu Sinnadurai, *Law of Contract in Malaysia and Singapore: Cases and Commentary*, 2nd edn (1987), p. 519.
10. [1956] AC 696 (HL).
11. *Chitty on Contracts – General Principles*, 24th edn, p. 658/9.
12. [1983] 1 CLJ 73; [1983] CLJ (Rep) 350 (FC).
13. [1984] 1 CLJ 347; [1984] 1 CLJ (Rep) 181 (FC).
14. 57: Agreement to do impossible act: (1) An agreement to do an act impossible in itself is void. (2) Contract to do act afterwards becoming impossible or unlawful – A contract to do an act which, after the contract is made, becomes impossible, or by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful. (3) Compensation for loss through non-performance of act known to be impossible or unlawful – Where one person has promised to do

A something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know, to be impossible or unlawful, the promisor must make compensation to the promisee for any loss which the promisee sustains through the non-performance of the promise.

B 15. [2007] 3 CLJ 695 (CA).

16. [1983] AC 444 (HL).

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